
**COMPATIBILITY DETERMINATION
AND ENVIRONMENTAL ACTION STATEMENT
FOR
COMMERCIAL FISHING (PHASE-OUT)
AT
MERRITT ISLAND NATIONAL WILDLIFE REFUGE
BREVARD AND VOLUSIA COUNTIES, FLORIDA**

Merritt Island National Wildlife Refuge
U.S. Department of the Interior
Fish and Wildlife Service
Southeast Region
Titusville, FL

May 2018

TABLE OF CONTENTS

COMPATIBILITY DETERMINATION	1
Existing Use.....	1
References Cited	7
Approval	10
Appendix A: Merritt Island National Wildlife Refuge	11
Appendix B: Proposed Special Use Permit Conditions.....	12
Appendix C: Service's Response to Comments	14
ENVIRONMENTAL ACTION STATEMENT FOR CATEGORICAL EXCLUSION	25

Compatibility Determination

EXISTING USE: Commercial Fishing (phase-out)

Refuge Name: Merritt Island National Wildlife Refuge

Date Established: August 28, 1963

Establishing and Acquisition Authorities: Migratory Bird Conservation Act; North American Wetlands Conservation Act

Refuge Purposes: The U.S. Fish and Wildlife Service (FWS or Service) administratively designated Merritt Island National Wildlife Refuge (NWR, MINWR, or refuge) in 1963 under the provisions of the Migratory Bird Conservation Act, with a primary purpose of these lands and waters identified:

"... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds."

16 USC §715d (Migratory Bird Conservation Act)

In addition, the administrative designation of the refuge under the provisions of the Migratory Bird Conservation Act, which also recognizes benefits to other species, including those designated as threatened or endangered, included an additional primary purpose:

"... to conserve and protect migratory birds ... and other species of wildlife that are listed ... as endangered species or threatened species and to restore or develop adequate wildlife habitat."

16 USC §715i (Migratory Bird Conservation Act)

The primary purposes identified during designation of the refuge apply to all lands and waters managed by the refuge, regardless of when they were added to the refuge, including lands and waters under management agreements with National Aeronautics and Space Administration (NASA) and the State of Florida.

In 1995, under the authority of the North American Wetlands Conservation Act, the Service and its partners began purchasing additional lands and waters in the northwest corner of the refuge, the Turnbull Creek area, identifying a secondary purpose of the refuge for this area:

"(1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries."

16 USC §4401(2)(b) (North American Wetlands Conservation Act)

This secondary purpose applies only to those lands and waters of the Turnbull Creek area of the refuge. However, the primary purpose also applies to the lands and waters of the Turnbull Creek area.

In the legislation that created the Canaveral National Seashore (Seashore or CANA) as a unit of the National Park Service in 1975, Congress established the Seashore on new lands and waters and on some lands and waters already being managed as part of the refuge. The refuge overlay area encompasses approximately 34,345 acres and includes southern Mosquito Lagoon. The Seashore was established "... to preserve and protect the outstanding natural, scenic, scientific, ecologic, and historic values ... and to provide for public outdoor recreation use and enjoyment of the same ... the Secretary shall retain such lands in their natural and primitive condition, shall prohibit vehicular traffic on the beach except for administrative purposes, and shall develop only those facilities which he deems essential for public health and safety" [16 USC §459(j)]. This language applies much as a wilderness designation might apply, making this a secondary purpose for the 34,345 acres of lands and waters in the refuge overlay portion of the Seashore.

National Wildlife Refuge System Mission: The mission of the National Wildlife Refuge System, as defined by the National Wildlife Refuge System Improvement Act of 1997, is:

... to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Description of Use: Prior to Merritt Island NWR establishment in 1963, commercial fishing/harvesting of clams, oysters, crabs, shrimp, and fin fish within the waters currently encompassed by the refuge was an important local economic activity. Under the agreement between the Service and NASA, the Service manages the non-operational areas of Kennedy Space Center (KSC) as Merritt Island NWR. The properties included in the deeds of dedication from the State of Florida to NASA conveyed all rights to the federal government for primary use for the national space program and secondary use as a national wildlife refuge or public park, including the water column and the submerged lands. Further, in 1975 Congress established Canaveral National Seashore [Public Law 93-626, 16 USC §459(j)], much of which overlaps KSC and Merritt Island NWR, including Mosquito Lagoon where much of the commercial fishing/harvesting activity occurs. In the law, Congress clearly outlined that the existing Merritt Island NWR would continue to be managed as a refuge under refuge authorities.

Merritt Island NWR encompasses 139,000 acres, including nearly 50,000 acres of the Indian River Lagoon system (a 156-mile long estuary), of which 43,000 acres are public open waters. The remaining 6,600 acres of the Indian River Lagoon system are located within KSC's security area and are closed to all public access (Appendix A). The shallow estuarine waters within the refuge support a diversity of flora and fauna, including mangrove forests, salt marshes, and seagrass flats, as well as habitat for numerous invertebrate and vertebrate species.

The Service reviewed the phase-out of commercial fishing (seafood harvesting) for compatibility during the comprehensive planning process for Merritt Island NWR, which included the draft and final Comprehensive Conservation Plans (CCPs) (FWS 2006, FWS 2008), Environmental Assessment (EA) (FWS 2006) for the CCP, and associated Finding of No Significant Impact (FONSI) (FWS 2008). In the Merritt Island NWR 2008 CCP (FWS 2008), the Compatibility Determination (CD) for the phase out of commercial fishing at Merritt Island NWR was signed in 2007 as part of the final CCP; the final CCP with the final CD for commercial fishing (phase out) was published in 2008. Since 1999, joint-agency [FWS and National Park Service (NPS)] commercial use permits were issued within the boundaries of Canaveral National Seashore and

Merritt Island NWR. Permit holders were not adequately notified of the sunset date and the phase out was not fully implemented as outlined in the 2008 CCP and the CD; consequently, the FWS proposes to extend the phase-out of commercial fishing/harvesting within Merritt Island NWR for another 10 years with a sunset date of September 30, 2028. The FWS will assume permitting responsibilities of commercial fishing/harvesting activities within the Merritt Island NWR on October 1, 2018. Only those commercial anglers/harvesters permitted by the National Park Service between October 1, 2015 and September 30, 2017 (80 individuals) will be allowed to apply for Merritt Island NWR commercial fishing/harvesting special use permits on October 1, 2018. During the 10-year phase-out period, the number of permits will be expected to decline as harvesters retire, choose not to renew their permits, or fail to meet permit requirements. Transfer of permits to family members during the 10-year phase-out will be allowed based on permit requirements. The FWS and NPS will develop, as appropriate, a joint or reciprocal permit program to accommodate commercial anglers/harvesters utilizing both Merritt Island NWR and Canaveral National Seashore.

Current commercial fishing/harvesting activities on the refuge include crabbing using crab pots; clamming using rakes; and fishing using hook and line, cast nets, and seine nets. Continued use will include commercial fishing/harvesting year-round, based on regulatory limits and seasonal abundance of commercial species. A total of 13,600 acres of the public open waters within the refuge will be closed to commercial fishing/harvesting, including pole and troll zones (including the running lanes) within Mosquito Lagoon and the no motor zone within Banana River. The refuge's 54 wetland impoundments also will be closed to commercial fishing/harvesting. Refuge and off-site boat ramps will continue to be utilized by commercial anglers/harvesters to access refuge waters.

Availability of Resources: The permitting process will require the tracking of annual permit applications, including reviewing boat registration, saltwater products license, and photo identification to renew each permit. The permits will expire on September 30 of each year. Administrative oversight will be required to process the permits and handle the fees collected. In addition, catch logs will continue to be maintained and submitted to the refuge by the permittee; administrative oversight will be required to review and analyze these catch logs monthly. Law enforcement patrols by Federal Wildlife Officers will be required to ensure commercial fishing/harvesting permit holders adhere to special use permit conditions. Through permit fees and appropriated funds, the refuge will have the resources to manage this use. However, current resources of the refuge alone will not be sufficient to monitor the specific environmental impacts associated with the use and will require assistance from partnering agencies, such as Florida Fish and Wildlife Conservation Commission (FWC) and Florida Department of Agriculture and Consumer Services (FDACS).

Management Resources	Annual Cost
Permit Processing	\$52,000
Law Enforcement	\$22,000
Boat Ramp/Parking Lot Maintenance	\$5,000
Total Costs	\$79,000

The proposed annual permit/user fee is \$250. Based on an 80 permit/year limit, a maximum of \$20,000 annually will be collected, of which 80% will be returned to the refuge and 20% will be retained by the Service's Southeast Regional Office. The number of permitted seafood harvesters is expected to decline over the 10-year phase-out, reducing annual costs and fee revenue. The annual permit fee could increase if costs to manage the program increase.

Anticipated Impacts of Use: Although some types of commercial fishing/harvesting are declining within the 156-mile long Indian River Lagoon system (East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council 2016), saltwater products harvesting is economically important to local communities. Refuge staff has noted that wild clam harvest on the refuge is declining, but commercial baitfish harvesting is increasing. Baitfish harvesting is extremely important to local bait shops and the recreational anglers who purchase the bait for their fishing trips. In addition to bait fisheries, crabbing and finfish harvest appear to be important based on catch logs provided to the National Park Service from permitted commercial anglers/harvesters.

The inherent environmental impacts of the extension of the phase-out of commercial fishing/harvesting come from two distinct groupings: impacts that result from the operation of motorized boats in the environment and direct and indirect wildlife resource impacts. Operation of motorized vessels introduces motor exhaust, turbidity of the water, and alteration of the marine bottoms. Motorized boating has been shown to alter distribution of wildlife, reduce use of particular habitats by waterfowl and other birds, and alters wildlife feeding behavior, and cause premature wildlife departure from areas. Impacts of boating can occur even at low densities, given the ability of powerboats to cover extensive areas in a short amount of time, the noise they produce, and their speed (Sterling and Dzubin 1967; Bergman 1973; Speight 1973; Skagen 1980; Korschgen et al. 1985; Kahl 1991; Bauer et al. 1992; Dahlgren and Korschgen 1992). Direct wildlife resources impacts include the direct removal of the species by fishing/harvesting activities, while indirect impacts include trophic level interactions (e.g., less bait for gamefish to eat). We recognize that indirect impacts of fishing/harvesting on food web interactions are mostly unknown and difficult to quantify. However, some direct and indirect impacts are well documented. More specifically, crabbing impacts include the by-catch in crab pots of diamond-backed terrapins (Bishop 1983, Roosenburg and Green 2000) and other organisms. In addition, derelict traps that have been abandoned or moved by storms continue to catch and kill many organisms (Bilkovic et al. 2016). Manatees have also become entangled in the float lines of the pots and suffered loss of appendages or death (Renert et al. 2017). Clamming with rakes or tongs can disturb or destroy marine grasses. Raking also adds to the turbidity of the water (Munari et al. 2006), which can impact seagrass growth.

The level of recreational fishing from the shore and from boats continues to increase in Merritt Island NWR (Scheidt and Garreau 2007). Direct competition is expected to occur between recreational and commercial fishing/harvesting activities. Disturbance to recreational boaters/anglers and commercial fishing guides from commercial black drum harvesting activities has been reported to refuge staff. Potential congestion at refuge boat ramps could be expected due to concurrent use by recreational boaters and paddlers, commercial fishing guides, and commercial anglers/harvesters. Users of kayaks, canoes, and paddleboards could be disturbed by general motor boating and/or commercial fishing/harvesting activities such as setting and retrieving crab pots and seining and cast netting.

To limit impacts from commercial fishing/harvesting within the refuge, FWC regulated state seasons and size and bag limits for commercial species will be enforced. Closed estuarine areas within the refuge will serve to replenish fish populations in the adjacent public waters (Stevenson and Sulak 2001). Baseline data from fish monitoring conducted in 2015-16 by FWC (Paperno, et al. 2016) will be compared to future monitoring efforts to inform decisions related to management of documented natural and anthropogenic impacts to the fish community. Permitted commercial anglers/harvesters and their families could experience negative economic impacts from the phase-out of commercial fishing/harvesting within the refuge; although, state-submerged waters outside of the refuge will not be affected by the proposed phase-out and will

remain open to commercial fishing/harvesting. Additionally, the phase-out will provide time for commercial anglers/harvesters to transition to other employment.

To reduce impacts to the refuge's natural resources, visitors, and government partners, permit restrictions and conditions will be implemented, including the exclusion of commercial seafood fishing/harvesting within the 3,000-acre Mosquito Lagoon pole and troll zones (including running lanes) and the 10,600-acre Banana River no-motor boating zone. Additionally, commercial anglers/harvesters will not be allowed to operate within the refuge's 54 wetland impoundments. Commercial fishing/harvesting permit restrictions will be adjusted if needed to mitigate serious documented impacts to priority public uses, wildlife, and/or the environment. Crab trap designs will be required to exclude diamond-backed terrapins. Derelict crab traps will be required to be recovered annually in accordance with State regulations. The Service will continue to consult and coordinate with the FWC, FDACS, National Park Service, and NASA as needed and appropriate. Because the number of commercial anglers/harvesters is expected to decline during the 10-year phase-out, environmental and user conflict impacts from commercial fishing/harvesting activities also are expected to diminish over time. However, recreational anglers, commercial fishing guides, and local bait shops would be impacted if the phase-out reduces the availability of baitfish. Proposed permit conditions and restrictions are listed in Appendix B.

Public Review and Comment: The Service conducted robust public involvement during the development of the previous CD to phase out the use under the CCP for Merritt Island NWR, which included scoping and public review and comment (see FWS 2006 and FWS 2008 for details). Further, given the overlap with Canaveral National Seashore, National Park Service, this use was also discussed during the development of the General Management Plan for Canaveral National Seashore (National Park Service 2014). This current re-evaluation of the CD builds upon the previous planning and public involvement effort for the CCP.

The Service conducted public scoping on the proposed 10-year extension of the commercial fishing/harvesting use from August 22, 2017 through September 8, 2017. The Service mailed or emailed a public information flyer to nearly 700 individuals, organizations, permit holders, businesses, and governmental agencies. In addition, the Service posted the public information flyer at the refuge's visitor center, on the refuge's website, and on the refuge's Facebook page. A press release was also sent out. The Service received 27 comments during the 2017 scoping period expressing both support and opposition to the proposed extension of the commercial fishing/harvesting use. Combined with previous comments submitted during the CCP's planning process, these scoping comments were used to help inform development of the draft CD and the draft Environmental Action Statement (EAS). The draft CD and draft EAS were made available to the public for review and comment for a period of over 30 days (February 22, 2018 to March 30, 2018). The potentially interested Native American Tribes were invited to review the draft CD and draft EAS and send the Service any concerns or comments. The draft CD and draft EAS were also sent to the Florida State Clearinghouse for review and comment by State agencies. Public notice included mail and email notices to the mailing list and Merritt Island NWR special use permit holders, notice posted on the Merritt Island NWR website and Facebook page, and notice posted at the Merritt Island NWR visitor center.

The Service received 82 submissions on the proposal from individuals, commercial anglers/harvesters, commercial fishing guides, organizations, local businesses, and governmental agencies. All comments received on the draft CD and draft EAS were reviewed in the development of the final CD and final EAS. See Appendix C for a summary of the substantive comments submitted and the Service's responses.

Determination:

- ☐ Use is Not Compatible
- ☒ Use is Compatible, with the Listed Stipulations

Stipulations Necessary to Ensure Compatibility:

- The number of permits issued for commercial fishing/harvesting will be capped at 80. Only commercial anglers/harvesters who obtained the joint National Park Service/U.S. Fish and Wildlife Service commercial fishing/harvesting permits between October 1, 2015 and September 30, 2017 will be allowed to apply for commercial fishing/harvesting special use permits on Merritt Island NWR.
- Permits not renewed annually will be retired. The total number of permits will be expected to decrease over time as permits are retired when users do not renew them, permit holders do not report any catch during the year, or permits are revoked for non-compliance. Additionally, some of the potential applicants may choose not to operate within the refuge waters and instead choose to use adjacent waters for their commercial fishing/harvesting activities.
- Special use permits will be valid only for the open public waters of Merritt Island NWR. Certain water areas with shallow water, sensitive bottoms, and/or other sensitive resources may be closed to commercial fishing/harvesting, including the Mosquito Lagoon pole and troll zones and running lanes and the no motor zone in Banana River. All refuge wetland impoundments are closed to commercial fishing/harvesting.
- Permits will be able to be transferred to an immediate family member (i.e., father, son, daughter, mother, brother, sister, husband, wife).
- All stipulations/restrictions to ensure compatibility will be clearly outlined on annual special use permits.
- Crab trap designs will be required to exclude entry by diamondback terrapins. This requirement could be updated in future years in accordance with new information to protect diamondback terrapins and other non-target species.
- Crabbers will be required to recover derelict crab traps annually in accordance with State regulations.
- All applicable local, State, and federal laws, policies, and regulations will apply.
- The Service will continue to coordinate closely with the State and federal partners, including FWC, FDACS, National Park Service, and NASA. Coordination will include development of appropriate monitoring to understand the commercial fishing/harvesting activities and their impacts (e.g., to wildlife, habitat, and other users) and to adapt management as needed.
- Refuge user fees will be expected to increase if administration costs for this program increase.
- Refuge special use permits will detail the approved permit holder, agents, method(s) of harvest, target species, equipment, and identification numbers for approved commercial fishing/harvesting activities on Merritt Island NWR. The refuge special use permit allows a permit holder to replace equipment, operators/agents, or anything else related to its activities on the refuge, whether temporary or permanent. For temporary changes lasting less than 1 week, a note from the permit holder must be in possession of the operator at all times while on the refuge. For permanent changes, the permit holder will need to notify the Refuge Manager within 30 days; these changes will need to be reflected in an updated permit to replace the existing permit.

- The refuge will work with Canaveral National Seashore, NPS to address any future joint or reciprocal permitting.

Justification: The Service recognizes the historical and cultural importance of watermen to the local area. To not place undue hardship on these families and their business, the phased approach to commercial fishing/harvesting was designed to be fair and equitable. The Service also recognizes the shortcomings of the previous phase-out and proposes the current 10-year extension as a reasonable solution. The stipulations outlined above will minimize potential impacts relative to wildlife/human interactions. At the current permit level, phasing out commercial fishing/harvesting does not seem to conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge. Based on available science and best professional judgement, the Service has determined that phasing out commercial fishing/harvesting by September 30, 2028 at Merritt Island NWR, in accordance with the stipulations provided here, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

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<https://ecos.fws.gov/ServCat/Reference/Profile/5972>

NEPA Compliance for Refuge Use Description and Compatibility Determination Revision:

- ☐ Categorical Exclusion without Environmental Action Statement
- ☒ Categorical Exclusion and Environmental Action Statement
- ☐ Environmental Assessment and Finding of No Significant Impact
- ☐ Environmental Impact Statement and Record of Decision

Several categorical exclusions apply to the proposed extension to September 30, 2028 of the commercial fishing/harvesting use on Merritt Island NWR, including:

- 516 DM 8.5(A)(1): Changes or amendments to an approved action when such changes have no or minor potential environmental impact.
- 516 DM 8.5(B)(2): The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible environmental effects on-site or in the vicinity of the site.
- 516 DM 8.5(B)(7): Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures, and
- 516 DM 8.5(B)(9): Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated

The above listed use was included in the Comprehensive Conservation Plan (CCP) (FWS 2008). The Environmental Assessment (EA) (FWS 2006) for the draft CCP (FWS 2006) for Merritt Island NWR previously analyzed the impacts of this use. The Finding of No Significant Impact (FWS 2008) for the 2006 EA determined that no significant impacts were anticipated; this use and the associated impacts to the affected environment have not changed substantially since that analysis. Further, the Proposed Action will not trigger any of the extraordinary circumstances outlined in 43 CFR §46.215. For the above listed reasons and citations from 43 CFR §46.210 and 516 DM 8, the Proposed Action is categorically excluded from further NEPA documentation. (For more detailed information, see the Environmental Action Statement that documents the categorical exclusions for this Proposed Action.)

Mandatory 10-year Reevaluation Date: _____

APPROVAL

Approval of Compatibility Determination: Phasing out Commercial Fishing/Harvesting from Merritt Island National Wildlife Refuge by September 30, 2028

Layne Hamilton,
Project Leader,
Merritt Island NWR Complex:

Layne Hamilton April 23, 2018
Signature Date

Pamala Wingrove,
Regional Compatibility
Coordinator,
Southeast Region:

Pamala J. Wingrove 5/7/2018
Signature Date

Kathleen Burchett,
Refuge Supervisor,
Area II, Southeast Region:

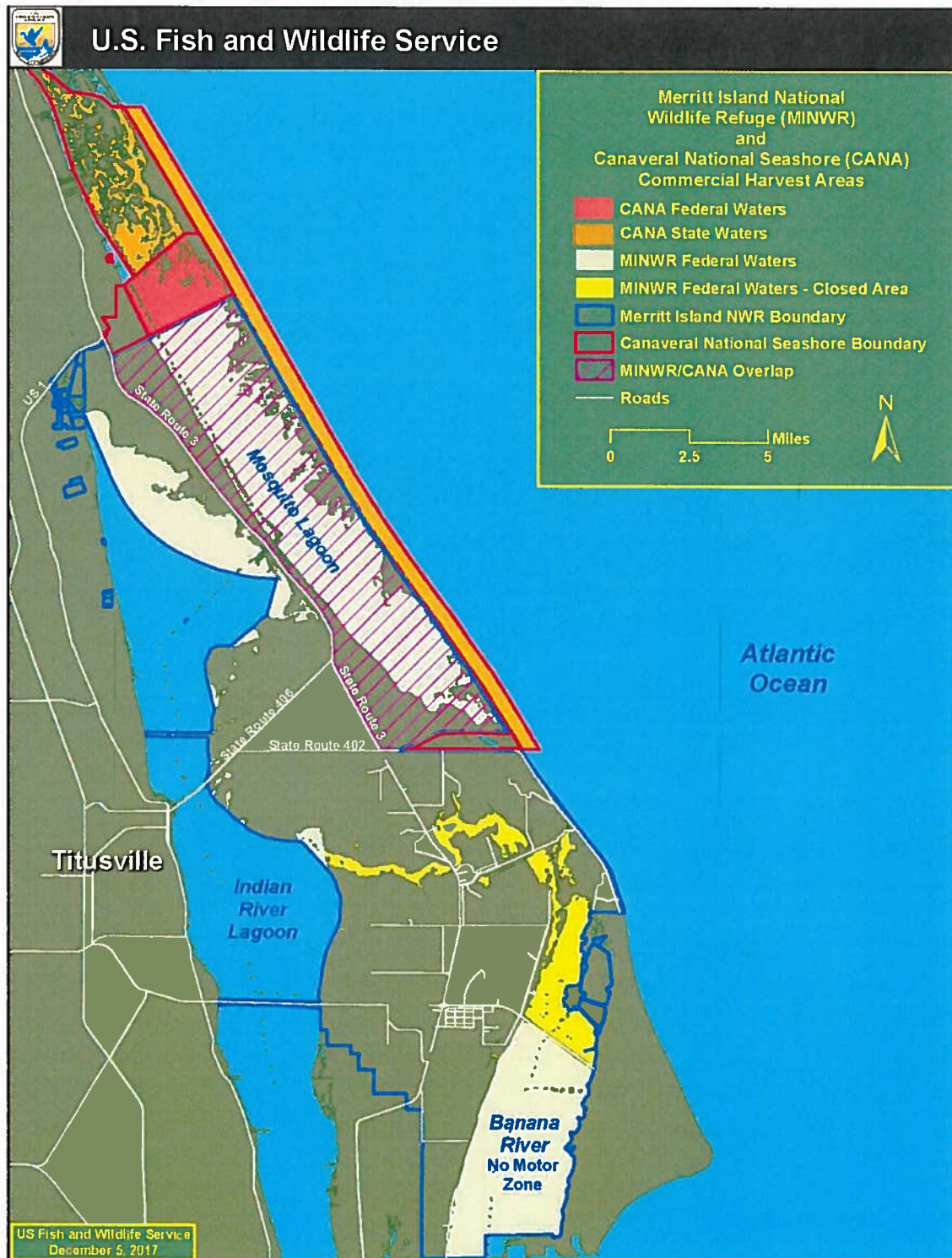
Kathleen Burchett 5/3/2018
Signature Date

David Viker,
Regional Chief,
National Wildlife Refuge
System, Southeast Region:

for

Brett Edmister 5/17/18
Signature Date

APPENDIX A: MERRITT ISLAND NATIONAL WILDLIFE REFUGE



APPENDIX B: PROPOSED SPECIAL USE PERMIT CONDITIONS

- Any permit not renewed by the close of business at the end of September of any year will be retired and will not be re-issued in future years.
- Special use permits will be valid only for the open public waters of Merritt Island NWR. Certain water areas with shallow water, sensitive bottoms, and/or other sensitive resources may be closed to commercial fishing/harvesting.
- Mosquito Lagoon Pole/Troll Zones will be closed to all commercial fishing/harvesting activities, including the running lanes within the Pole/Troll Zone.
- The Banana River no motor zone will be closed to all commercial fishing/harvesting activities.
- All refuge wetland impoundments will be closed to all commercial fishing/harvesting activities.
- Permits will be able to be transferred to an immediate family member (i.e., father, son, daughter, mother, brother, sister, husband, wife).
- Crab trap designs will be required to have an opening that measures 1.75 inches by 4.75 inches to exclude entry by diamondback terrapins. This excluder opening can be accomplished through alteration of existing traps or through the use of a commercially available turtle excluder device. This requirement could be updated in future years in accordance with new information to protect diamondback terrapins and other non-target species.
- Crabbers will be required to recover derelict crab traps annually in accordance with State regulations.
- All applicable local, State, and federal laws, policies, and regulations apply.
- The Service will continue to coordinate closely with the State and federal partners, including FWC, FDACS, National Park Service, and NASA. Coordination will include development of appropriate monitoring to understand the commercial fishing/harvesting activities and their impacts (e.g., to wildlife, habitat, and other users), facilitate accurate harvest reporting, and to adapt management as needed.
- Permit fees for 2018-2019 will be set at \$250. Fees may be anticipated to increase over time to ensure that the costs associated with the program are covered.
- Permit applications must be submitted by August 1 for the upcoming fiscal year (October 1 through September 30). Permits will only be valid October 1 through September 30. (For example, for 2018-2019, applications will be required to be submitted by August 1, 2018, for permits for October 1, 2018 through September 30, 2019).
- The Service may close the commercial harvest of certain species at any time to minimize impacts.
- The Service may alter the methods of harvest and/or species at any time to minimize impacts.
- In conformance with standard National Wildlife Refuge System practices, a minimum liability insurance of \$300,000 will be required for each permit holder. The value could increase over time.
- Permits may be modified or revoked by the Service for violation of any special use permit conditions.
- Permit holders will be required to record and submit monthly catch log records to the refuge within 14 days of the end of each month. Catches of zero must be reported.
- Permits will be revoked for failure to comply with reporting requirements.
- Each permit holder will be required to have the special use permit on his/her person at

all times while operating on the refuge. For multiple boats and/or agents, each will be required to have a copy of the special use permit on his/her person at all times while operating on the refuge. All boats and agents will be required to be included in the special use permit application. Each permit holder will be limited to operating a single vessel on the refuge at any one time.

- Commercial anglers/harvesters will not be allowed to concurrently hold a refuge permit for both commercial fishing/harvesting and commercial fishing guide.
- Permitted activities will be limited to only daylight hours for certain harvesting activities (e.g., for bait fish, clams, and crabs).
- The method of harvest and target species will be required to be described in the special use permit application; special use permits will be limited to these methods and species. Specific equipment and identification numbers to be used will be required to be included in the special use permit application (e.g., including boat registration numbers and crab trap identification numbers).
- The refuge special use permit allows a permit holder to replace equipment, operators/agents, or anything else related to its activities on the refuge, whether temporary or permanent. For temporary changes lasting less than 1 week, a note from the permit holder must be in possession of the operator at all times while on the refuge. For permanent changes, the permit holder will need to notify the Refuge Manager within 30 days; these changes will need to be reflected in an updated permit to replace the existing permit.

Note: The refuge will work with Canaveral National Seashore, NPS to address any future joint or reciprocal permitting.

APPENDIX C: SERVICE'S RESPONSE TO COMMENTS

Public comments on the Draft Compatibility Determination (CD) and Draft Environmental Action Statement (EAS) for Commercial Fishing (Phase-Out) at Merritt Island National Wildlife Refuge NWR, refuge) were submitted in writing by email, mail, and fax. The Service received 82 submissions on the proposal from individuals, commercial anglers/harvesters, commercial fishing guides, organizations, local businesses, and governmental agencies, including the National Park Service, Florida Fish and Wildlife Conservation Commission (FWC), City of Oak Hill, Mid-Coast Flyfishers, Volusia Indian River Lagoon Coalition, Southeastern Fisheries Association, Organized Fishermen of Florida, and Coastal Conservation Association members. The Florida State Clearinghouse declined State agency review of the Draft CD and Draft EAS; instead, the Florida State Clearinghouse granted approval to proceed with the project.

Under NEPA, the U.S. Fish and Wildlife Service (Service) must respond to substantive comments. For purposes of this final CD, a substantive comment is one that was submitted during the public review and comment period which was within the scope of the proposed action, was specific to the proposed action, had a direct relationship to the proposed action, and included reasons for the Service to consider it. (For example, a substantive comment could be that the document referenced 500 individuals of a particular species, but that current research found 600. In such a case, the Service would likely update the document to reflect the 600, citing the current research. While a comment that would not be considered substantive would be: "We love the proposal.") Multiple comments were submitted regarding concerns outside of the purview of the proposal. Comments outside the scope of the proposal were not addressed.

The substantive comments were summarized and the comments and associated responses are grouped together under four general topics, as listed.

- Wildlife and Habitat
- Visitor Services
- Refuge Administration
- Other Comments

WILDLIFE AND HABITAT

Indian River Lagoon System Health

Comments:

Multiple comments were submitted regarding the health of the Indian River Lagoon system (including Mosquito Lagoon), including declining fish populations; fish kills; poor seagrass beds; dwindling bird numbers; water quality concerns; and negative impacts from algae blooms, fertilizer runoff, other pollutants, septic systems, and other human activities that interfere with the functioning of the system. Multiple comments suggested that commercial fishing/harvesting activities were negatively impacting the already fragile Lagoon system. One comment expressed concern with the use of nets and long lines, taking high numbers of fish and leaving behind dead fish. Multiple comments supported ending commercial fishing/harvesting immediately to limit the associated impacts to the system. One comment suggested no fishing zones, no motor zones, and no trespassing zones to help the Lagoon system recover. One comment suggested that the ban of commercial fishing/harvesting is a misplaced frustration towards widespread concerns for the health of the Lagoon system. Another comment outlined that while numerous factors contribute to the decline of the health of the Indian River Lagoon system, immediately stopping the commercial fishing/harvesting activities within the refuge

would be a first step to regaining the world class fishery of this area. One comment stated that commercial fishing/harvesting activities further stress the fishery that is already damaged, including the negative seagrass impacts from the harvesting activities of commercial black drum fishermen and that monitoring of these activities is needed to enforce existing laws and understand the associated impacts. Another comment stated that adverse environmental impacts would not result from responsible commercial fishing/harvesting activities that comply with applicable laws and that enforcement of existing laws would address concerns. One comment pointed out that commercial anglers/harvesters are the most accountable and controllable user of the resource with required reporting of species harvested, amount harvested, and type and amount of gear used within required seasons and licenses; in contrast, recreational users are growing in numbers with no control over the number or type of access. A request was submitted for a future discussion on the scientific evidence regarding the best utilization of the natural resources and why excluding commercial fishing/harvesting would result in a better, more productive resource for the American people. Another comment stated that crab trap bait provides a food source for other species.

Service's Response:

Comments noted. There is no evidence that crab trap bait is an important food source for native species. While multiple governmental, conservation, and educational institutions continue to work to understand and address the impacts to the health of the Indian River Lagoon system due to recent algal blooms, the Service does not have data demonstrating a cause and effect relationship between commercial fishing/harvesting at Merritt Island NWR and the health of the Indian River Lagoon system. From 2013-2016, FWC increased its program sampling effort with its existing Fisheries-Independent Monitoring in the northern Indian River Lagoon to compare with historical pre-bloom sampling efforts in the Mosquito Lagoon (2007-2010). The results of the 2015-2016 sampling indicated that the fish community in the northern Indian River Lagoon was similar to pre-superbloom sampling (Paperno, et al. 2016). The Service will continue to work with the FWC to better understand the impacts associated with commercial fishing/harvesting on the refuge.

Fish Stocks/Catch and Release Fishery

Comments:

Multiple comments were submitted supporting making the area catch and release to help fish stocks, decrease negative impacts, and increase enjoyment of the refuge's waters. While the majority of the comments involving catch and release favored only catch and release, one comment supported a catch and release only fishery, excluding those with proper harvesting permits. Other comments proposed zero possession of fish and shellfish on the refuge.

Service's Response:

Comments noted. While the practice of catch and release fishing is common on the refuge, the harvest of game fish for consumption is a long standing tradition within the refuge and has been an important commercial economic activity within the local community. Fishing on Merritt Island NWR is subject to state of Florida fishing regulations and refuge-specific regulations found in 50 CFR §32.28.

Fish Populations and Level of Fish Harvest

Comments:

Multiple comments were submitted regarding the level of fishing pressure and harvest of fish from the Indian River Lagoon system and the refuge. Multiple comments expressed concern

regarding the negative impact that commercial fishing/harvesting has on fish populations and the availability of fish for recreational anglers. Multiple comments suggested that recreational anglers far outweigh the commercial fishermen in sheer numbers and in the take of fish. Specific concerns were expressed for red drum, spotted sea trout, and black drum. One comment outlined that studies show that the actual products taken from the refuge through commercial fishing/harvesting were only 3-4%, with the remaining 96-97% of take was by the private sector; the comment specifically mentioned a NASA study completed 10 to 12 years ago. Another comment outlined that commercial fishing/harvesting take based on landings is insignificant in relation to the biological stocks.

Service's Response:

Comments noted. The Service agrees that the number of recreational users is far larger than the number of commercial fishing/harvesting permit holders. The Service also agrees that commercial landings for spotted sea trout and black drum are a small percentage of total landings. No commercial harvest of red drum is allowed in the state of Florida. Black drum landings are significant portion of the commercial harvest on the refuge. The Scheidt and Garreau (2007) study referenced in the draft compatibility determination (which is assumed to be the "NASA" report that is referred to in one of the comments) does indicate that commercial harvest is a small percentage of total harvest for black drum and spotted sea trout. Within the refuge, 6,600 acres of Banana Creek have been closed to fishing for over 50 years. According to Stevenson and Sulak (2001), this area serves to replenish fish populations in the adjacent public waters.

Derelict Crab Traps

Comment:

One comment pointed out the alarming number of derelict crab traps in the Indian River Lagoon.

Service's Response:

Comment noted. The Service recognizes that derelict crab traps are a serious problem. Crab traps are well documented in scientific literature to cause direct mortality to diamondback terrapins. Decline has been documented in the population of diamondback terrapins on the refuge to the point that the species is now rarely seen. While crab traps may not be the only cause in the decline in diamondback terrapins populations, the additive mortality that they cause threatens the continued existence of diamondback terrapins on the refuge. The Service regularly coordinates with the FWC to remove derelict crab traps on the refuge. Further, refuge special use permit conditions outline the required annual removal of derelict traps in accordance with State regulations; violation of special use permit conditions can result in the Service modifying or revoking the permit.

Oysters and Oyster Reefs

Comment:

The National Park Service clarified that oysters and oyster reefs probably do not occur south of Canaveral National Seashore on the refuge.

Service's Response:

The Service agrees that few, if any oysters occur on the refuge. The document was updated to replace "oyster reefs" on page 2 with ", as well as habitat for numerous invertebrate and vertebrate species" and "oysters" was removed from page 13.

Crab Trap Designs

Comment:

One comment was received from FWC regarding crab trap designs; FWC stated that it would like to work with the Service and the affected fishermen/harvesters to accommodate the crab trap design changes outlined in the compatibility determination.

Service's Response:

Comment noted. The Service intends to continue close coordination with FWC on all issues related to the commercial fishing/harvesting use on Merritt Island NWR.

Potential Future Closures

Comment:

One comment was received from FWC regarding potential future closures to commercial fishing/harvesting of certain areas with shallow water, sensitive bottoms, and/or other sensitive resources; FWC stated that it would appreciate coordination with the Service in advance of the Service closing any areas on Merritt Island NWR to commercial fishing/harvesting.

Service's Response:

Comment noted. The Service intends to continue close coordination with FWC on all issues related to the commercial fishing/harvesting use on Merritt Island NWR.

VISITOR SERVICES

Quality of the Fishing Experience

Comments:

Multiple comments expressed concern over the decline of the quality of the fishing experience in Mosquito Lagoon, including impacts from overfishing; high fishing pressure; disrespect from commercial and recreational users; and the declining numbers of redfish, spotted sea trout, and black drum.

Service's Response:

Comments noted. In accordance with the National Wildlife Refuge System Improvement Act, the Service recognizes the need to provide high quality opportunities for hunting, fishing, wildlife observation and photography, and environmental education. To limit impacts from commercial fishing/harvesting activities within the refuge, FWC regulated state seasons and size and bag limits for commercial species will be enforced. Currently closed estuarine areas within the refuge help serve to replenish fish populations in the adjacent public waters (Stevenson and Sulak 2001). Baseline data from fish monitoring conducted in 2015-16 by FWC (Paperno, et al. 2016) will be compared to future monitoring efforts to inform decisions related to management of documented natural and anthropogenic impacts to the fish community. To reduce impacts to the refuge's natural resources, visitors, and government partners, permit restrictions and conditions will be implemented, including the exclusion of commercial fishing/harvesting within the 3,000-acre Mosquito Lagoon pole and troll zones (including the running lanes) and the 10,600-acre Banana River no-motor boating zone. Additionally, commercial anglers/harvesters will not be allowed to operate within the refuge's 54 wetland impoundments. Commercial fishing/harvesting permit restrictions will be adjusted if needed to mitigate serious documented impacts to priority public uses, wildlife, and/or the environment.

Commercial Anglers/Harvesters Support of Visitors in Distress

Comment:

One comment pointed out that the commercial anglers/harvesters regularly respond to visitors in distress while boating on the refuge.

Service's Response:

Comment noted. While the Service recognizes and appreciates the service to other visitors provided by the commercial anglers/harvesters, this benefit does not address the reasons for phasing out the commercial fishing/harvesting use from the refuge.

REFUGE ADMINISTRATION

Jurisdiction

Comment:

One comment questioned the jurisdiction of the Service over the waters managed as part of Merritt Island NWR, suggesting that the State has authority over fishing and fish in these waters under agreement number 26106 of the Board of Trustees of the Internal Improvement Trust Fund and the United States of America regarding the "Retention of the absolute right of the people to fish on and the State of Florida to regulate the taking and possession of Salt-water fish over the lands dedicated pursuant to Section 370.01 and 370.102, Florida Statutes."

Service's Response:

Comment noted. While §379.2412, Florida Statutes, addresses the State of Florida's preemption of power to regulate the taking or possession of saltwater fish as defined in §379.101, Florida Statutes, these only apply to those lands and waters for which the state has retained those rights. Further, the above referenced Board of Trustees of the Internal Improvement Trust Fund document applies to Canaveral National Seashore, not to Merritt Island NWR and, thus, is not applicable to commercial fishing/harvesting activities on Merritt Island NWR and is not applicable to the proposed extension of the use on Merritt Island NWR.

For clarification, the Service has full authority and jurisdiction over commercial fishing/harvesting on Merritt Island NWR. The deeds of dedication from the State of Florida to the federal government at Kennedy Space Center are clear. The current interagency agreement between the Service and the National Aeronautics and Space Administration (NASA) at Kennedy Space Center provides that the Service has primary administration over real property at Kennedy Space Center that has not been withdrawn to support NASA missions. The deeds of dedication from the State of Florida to the federal government clearly recognize the use and management of those dedicated areas, including all submerged lands within the Kennedy Space Center boundary, for: (1) primary use for the Space Program of the United States and (2) for secondary use a wildlife refuge or for public park and recreation purposes. This applies to all waters and submerged lands within the Kennedy Space Center boundary managed as Merritt Island NWR, including all of Mosquito Lagoon within the refuge, the northern Indian River Lagoon within the refuge, and Banana Creek and Banana River within the refuge, as well as refuge portions of the Indian River Lagoon in small bays and areas outside of Dummit Creek, Black Point Creek, Cow Pen Creek, and Moore Creek.

Confusion seems to exist regarding the waters and submerged lands of Mosquito Lagoon managed by the U.S. Fish and Wildlife Service at Merritt Island NWR and those managed north of the refuge by the National Park Service at Canaveral National Seashore. The figure in

Appendix A differentiates between the state and federal waters of Canaveral National Seashore and the federal waters of Merritt Island NWR. Separate and apart from Merritt Island NWR, Canaveral National Seashore includes waters and submerged lands in Mosquito Lagoon managed under two general categories listed below.

1. The federal government has jurisdiction over those waters and submerged lands covered by the deeds of dedication from the State of Florida to the federal government at Kennedy Space Center. Including over 3,600 acres in Mosquito Lagoon, these waters and submerged lands are located south of Kennedy Space Center's northern boundary and north of Merritt Island NWR's northern boundary (H.M. Gomez Grant line).
2. Including over 5,300 acres in Mosquito Lagoon, the waters and submerged lands of Canaveral National Seashore for which the State of Florida retained rights and jurisdiction are located north of Kennedy Space Center's northern boundary. For the waters and submerged lands on Canaveral National Seashore for which the State of Florida retained those rights, §§ 370.101 and 379.2412, Florida Statutes apply.

Colloquially, it may be easier to understand the differences between the state and federal waters of Merritt Island NWR and Canaveral National Seashore as listed below and depicted in Appendix A.

- The waters and submerged lands of Merritt Island NWR that overlap Kennedy Space Center are federal waters, including:
 - Approximately 22,327 acres of Mosquito Lagoon south of the refuge's northern boundary/south of the H.M. Gomez Grant line;
 - Approximately 7,195 acres in the northern Indian River Lagoon;
 - Approximately 6,600 acres in Banana Creek and northern Banana River that are closed areas as part of the Kennedy Space Center Security Area;
 - Approximately 13,742 acres of the Banana River north of State Road 528 and north of the Canaveral Barge Canal; and
 - Portions of the Indian River Lagoon in small bays and areas outside of Dummit Creek, Black Point Creek, Cow Pen Creek, and Moore Creek.
- The waters and submerged lands of Canaveral National Seashore include both federal and state waters, including:
 - Approximately 3,688 acres of federal waters in Mosquito Lagoon north of the northern boundary of Merritt Island NWR/H.M. Gomez Grant line,
 - Approximately 5,313 acres of State waters in Mosquito Lagoon north of the northern boundary of Kennedy Space Center, and
 - Approximately 7,680 acres of State waters along the Atlantic Ocean shoreline.

Permits, Fees, and Regulations

Comments:

Multiple comments were submitted regarding permits, fees, and regulations. One comment expressed concern that the current fees and regulations were already high and that the proposed fee increase would cause existing permit holders to not renew permits since they would not be able to afford them. One comment stated that there should be no required "park permit" since the FWC already permits commercial fishing/harvesting and that additional permits are an overreach of bad government. One comment proposed that new permits be issued for commercial fishing/harvesting on the refuge. The FWC requested additional discussion with the Service regarding the requirement that commercial anglers/harvesters not be able to possess refuge permits for both commercial fishing/harvesting and commercial fishing guiding; being able to hold both permits may provide for the transition from commercial fishing/harvesting to commercial fishing guiding.

Service's Response:

Comments noted. Permit fees are required to help offset management costs to administer the use, including law enforcement patrols and impact monitoring. While it does represent an increase from the \$150 annual fee currently charged by the National Park Service, the proposed \$250 annual fee for 2018-2019 is an appropriate fee for a commercial use on a national wildlife refuge. It is important to recognize that the waters of the Merritt Island NWR are not the same as other area waters; they are part of the National Wildlife Refuge System and subject to applicable federal laws, regulations, and policies. Federal dollars are used to manage these federal waters; State fee money is not used to manage the refuge's waters. Thus, the refuge permit fees are used to support management of this use on the refuge. Commercially harvested clams, oysters, crabs, shrimp, and fin fish from the entire Indian River Lagoon system in 2015 were valued at over \$19 million (East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council 2016). The 2008 CCP capped the number of permits to be issued; the current proposal also caps the number of permits to be issued. As permits are not renewed, the number of active permits will decline until the sunset date of 2028. The Service intends to continue close coordination with FWC on all issues related to the commercial fishing/harvesting use on Merritt Island NWR.

Description of Method of Harvest, Target Species, Equipment, and Identification Numbers Required in Permit Applications and Permit Conditions

Comment:

One comment was submitted by FWC regarding the permit application requirement of and the permit conditions including the description of the method of harvest, target species, equipment, and identification numbers. FWC was concerned about and requested additional discussion regarding how this requirement would accommodate situations where substitute boats and/or substitute people may need to be authorized to pull crab traps in the event of equipment malfunction or health issues.

Service's Response:

The stipulations in the compatibility determination and the permit conditions outlined in Appendix B were updated to clarify flexibility to allow for temporary and permanent changes by the permit holder. Refuge special use permits will detail the approved permit holder, agents, method(s) of harvest, target species, equipment, and identification numbers for approved commercial fishing/harvesting activities on Merritt Island NWR. The refuge special use permit allows a permit holder to replace equipment, operators/agents, or anything else related to its activities on the refuge, whether temporary or permanent. For temporary changes lasting less than 1 week, a note from the permit holder must be in possession of the operator at all times while on the refuge. For permanent changes, the permit holder will need to notify the Refuge Manager within 30 days; these changes will need to be reflected in an updated permit to replace the existing permit. Failure to comply could result in revocation of the permit.

Joint or Reciprocal Commercial Fishing/Harvesting Permit for Merritt Island NWR and Canaveral National Seashore

Comment:

One comment suggested that the CD allow for the potential for a future joint permit for the refuge and Canaveral National Seashore.

Service's Response:

Clarifying text was added to the Description of Use section, as listed.

- The FWS and NPS will develop, as appropriate, a joint or reciprocal permit program to accommodate commercial anglers/harvesters utilizing both Merritt Island NWR and Canaveral National Seashore.

Clarifying text was also added at the end of the Stipulations section in the CD as a new bullet and to Appendix B under "Note", as listed.

- The refuge will work with Canaveral National Seashore to address any future joint or reciprocal permitting.

Extension of Commercial Fishing/Harvesting Use

Comments:

Multiple comments were submitted both supporting and opposing the proposed extension. Supporting comments referenced the long history of responsible commercial fishing/harvesting activities in this area, the stewardship of the commercial fishing/harvesting entities, the lack of scientific data supporting the need to phase out commercial fishing/harvesting, and the economic reliance of commercial anglers/harvesters on the refuge for a livelihood. Opposing comments referenced associated negative impacts to the Indian River Lagoon system, fish stocks, seagrass beds, recreational users, as well as the concern that a small group of users is allowed to harvest resources from the refuge for profit at the expense of recreational users, that commercial fishermen are taking fish from small and declining fish populations, that the extension is not necessary since the 2018 sunset was widely known, that the area needs time to recover to once again be called a world class fishery, that commercial fishing/harvesting activities would likely overfish the area, that allowing the use to continue on the refuge relies on bad data, and that commercial fishing/harvesting activities would be allowed to continue to occur in other areas, as well as the need to preserve the Lagoon for future generations. One comment suggested replacing the tax revenue from commercial fisherman with special tags for all recreational anglers and professional guides. One comment suggested halting the commercial fishing/harvesting use not only from Mosquito Lagoon, but also from the surrounding Intracoastal Waterway. Multiple comments suggested a compromise, ranging from a 1-year to a 4-year extension with many comments suggesting a 3-year extension. One comment suggested a 4-year phase out with permits decreasing 25% each year. Multiple comments suggested that the lack of notification was poor performance, negligence, political influence, or corruption. Multiple comments stated that the current proposed extension was not in keeping with the 2008 CCP for the refuge. One comment called for the immediate cessation of commercial black drum harvesting on the refuge. One comment suggested reduced quotas and seasons for the commercial harvesting activities on the refuge combined with a 3-year extension to assist the commercial anglers/harvesters to transition to other areas or ventures. One comment stated that businesses and consumers have a right to the seafood resources brought to market by the commercial anglers/harvesters. One comment suggested that the proposed extension contradicted the mission of the National Wildlife Refuge System. Multiple comments suggested going beyond the 10-year extension to simply allow commercial fishing/harvesting on the refuge. One comment suggested that instead of the 10-year extension, the commercial anglers/harvesters should be allowed to continue to operate in the traditional manner and locations until they retire or die.

Service's Response:

Comments noted. Commercial fishing/harvesting historically occurred in this area prior to designation of the refuge. During development of the CCP for the refuge, it was determined that

the commercial fishing/harvesting was not appropriate under applicable laws and policies; a 10-year phase out of the use was approved when the CCP was finalized in 2008. Commercial fishing/harvesting is currently scheduled to be phased out on Merritt Island NWR on September 30, 2018. However, during the 10-year phase-out period (2008-2018), commercial fishing/harvesting permit holders were not adequately notified of the sunset date due to an administrative oversight, consequently the phase-out was not fully implemented. The proposed extension (to 2028) is the Service's proposal to develop a reasonable approach to address the shortcomings related to the 2018 phase-out; the Service has evaluated options and is recommending an extension of the phase-out of commercial fishing/harvesting for an additional 10-year period. Other areas of the Indian River Lagoon system, totaling approximately 78% of the system, will remain unchanged. Areas off of the refuge currently open to commercial fishing/harvesting will continue to remain open to these activities under applicable laws, policies, and regulations.

Commercial Fishing/Harvesting Combined with Commercial Fishing Guides

Comment:

One comment expressed concern that commercial fishing/harvesting and commercial fishing guides were lumped together in a single category, since they are separate uses.

Service's Response:

Comment noted. For clarification, the commercial fishing/harvesting use and the commercial fishing guide use are two separate uses with separate CDs and separate permitting requirements. They are not lumped together.

Removal of Commercial Fishing Guides from the Refuge

Comment:

One comment stated that if the commercial fishing/harvesting use is to be removed from the refuge, then the commercial fishing guiding use should also be removed from the refuge.

Service's Response:

Comment noted. Both commercial fishing guiding and the phase-out of commercial fishing/harvesting were determined to be compatible in the 2008 CCP. The phase-out of commercial fishing/harvesting was necessary because the commercial harvesting of seafood/fish did not meet the criteria of an economic use of a national wildlife refuge (50 CFR §29.1). Conversely, the commercial fishing guiding use was determined to facilitate one of the priority public uses of the National Wildlife Refuge System, fishing, and was determined to be appropriate and compatible under Service policies and 50 CFR §29.1. Consequently, commercial fishing guiding would continue, but commercial fishing/harvesting would be phased out.

Law Enforcement

Comment:

One comment called for increased law enforcement to minimize impacts to the resources.

Service's Response:

Comment noted. Currently, Merritt Island NWR's Federal Wildlife Officers (FWOs) spend an average of 200 hours each year patrolling those portions of the Indian River Lagoon, Mosquito Lagoon, and Banana River located within the refuge. The officers enforce State, Federal, and

U.S. Coast Guard regulations. At least four hours each workday is spent checking bank anglers, totaling over 1,500 hours annually. The officers also work details with the FWC for marine sanitation, Boating Under the Influence, resource checks, and navigation/safety checks. Approximately 100 citations and warnings are issued annually for fishing violations; 35 citations and warnings for boating violations; and 14 citations and warnings for manatee zone violations. The FWOs work an average of four search and rescues each year. Boating patrol hours have dropped in recent years, while bank fishing compliance check hours have increased. Poll and Troll Zone (PTZ) complaints (in Mosquito Lagoon) have increased markedly in recent years and as a result, PTZ citations have significantly increased. Compliance checks of commercial fishing and ecotour guides and commercial anglers/harvesters are also conducted by the officers. Due to an increasing workload, FWOs from other refuges are periodically detailed to Merritt Island NWR to assist with enforcement issues.

OTHER

Socio-economic Impacts

Comments:

Multiple comments addressed socio-economic impacts. One comment expressed concern that without the proposed 10-year extension of the commercial fishing/harvesting use on the refuge, commercial anglers/harvesters in Oak Hill would suffer. Another comment outlined that the commercial fishing/harvesting activity on the refuge is an economic multiplier, supporting not only the individual commercial angler/harvester, but also bait shops and recreational anglers. One comment outlined that Florida tourism and sport fishing rely on the quality and availability of the resources and the quality of the fishing experience; surrounding hotels, motels, restaurants, gas stations, supermarkets, charter fishing businesses, and marinas would be hurt economically by the poor fishing quality of the Mosquito Lagoon caused by continued commercial fishing/harvesting. Another comment expressed concern over the impact of the proposal on a family's history of use of the Indian River Lagoon system; the future of commercial fishing/harvesting in this area; and the tourists from all over the world who visit to experience this area, fish its waters, and dine on its seafood. One comment outlined that while the commercial fishing/harvesting use has a small economic impact, the economic impact of the sport and recreational fishery combined with the area's eco-tourism is far more positive. One comment expressed concern that without the harvest from the refuge, area businesses would suffer and may be forced to rely on foreign sources.

Service's Response:

Comments noted. During development of the CCP, the Service recognized that some individuals would likely experience economic hardship with the sunset of commercial fishing/harvesting in 2018; the original 10-year phase-out period was developed to allow those individuals to retire or transition to other activities. The CCP's Environmental Assessment (EA) (2006) analyzed the overall impacts of implementation, which were anticipated to be positive. Substantial economic benefits are realized by local communities due to employment, income, and tax revenues effects generated from the refuge's users and visitors. Refuge visitors pay for recreation through entrance fees, lodging near the refuge, and purchases from local businesses for items to pursue their recreational experience. This spending generates economic activity throughout the local economy. According to the Service's 2013 Banking on Nature Report, \$60.4 million was generated by Merritt Island NWR in Brevard, Volusia, and Orange counties in FY 2011 (Carver and Caudill 2013). While some individuals will likely experience economic hardship with the sunset of the commercial fishing/harvesting use on the refuge, the overall economic impact of the refuge is positive and commercial anglers/harvesters will be able to

continue their harvesting activities on areas off the refuge. The proposed 10-year extension will provide sufficient notification and will provide the opportunity for commercial anglers/harvesters to transition to other areas or other activities or to retire. It is important to note that the total annual economic output of the Indian River Lagoon is about \$7.6 billion, with \$5.68 billion in Brevard and Volusia counties (East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council 2016).

Correction

Comment:

One comment pointed out that the joint permit previously issued for commercial fishing/harvesting on the refuge was a National Park Service/U.S. Fish and Wildlife Service permit and that the first bullet under the stipulations should be updated accordingly.

Service's Response:

The first bullet under the stipulations was corrected to reflect the joint National Park Service/U.S. Fish and Wildlife Service commercial fishing/harvesting permit. Further, the discussion on pages 2-3 under the description of the use was clarified.

APPENDIX C REFERENCES

- Carver, E. and J. Caudill. 2013. Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation. Division of Economics, U.S. Fish and Wildlife Service. October 2013. Washington, DC. 365 pp.
<https://www.fws.gov/refuges/about/refugereports/pdfs/BankingOnNature2013.pdf>
- East Central Florida Regional Planning Council and Treasure Coast Regional Planning Council. 2016. Indian River Lagoon Economic Valuation Update. August 26, 2016. Florida Department of Economic Opportunity Community Planning Technical Assistance Grant P0169. 54 pp.
http://tcrpc.org/special_projects/IRL_Econ_Valu/FinalReportIRL08_26_2016.pdf
- Paperno, R., D.H. Adams, and A.P. Sebastian. 2016. Indian River Lagoon enhanced fisheries monitoring and phytoplankton bloom impact evaluation. Final Report to St. Johns River Water Management District (Contract 27574). Florida Fish and Wildlife Conservation Commission, St. Petersburg, FL. 44pp.
- Stevenson, P.W. and K. Sulak. 2001. Egress of adult sport fish from an estuarine reserve within Merritt Island National Wildlife Refuge, FL. Gulf of Mexico Science 2:77-89.

Environmental Action Statement for Categorical Exclusion

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the following proposed action is categorically excluded from further NEPA documentation requirements consistent with 40 CFR §1508.4, 43 CFR §46.205, 43 CFR §46.210, 43 CFR §46.215, and 516 DM 8.

Proposed Action and Alternatives.

Under the Proposed Action, the U.S. Fish and Wildlife Service (Service or FWS) will update the existing Compatibility Determination (CD) (FWS 2008) and continue to approve phasing out commercial fishing from Merritt Island National Wildlife Refuge (NWR, MINWR, or refuge) by September 30, 2028 as presented in the final CD for this use (FWS 2018b).

Categorical Exclusions.

Multiple categorical exclusions apply to proposed revision of the CD for and the continued approval of phasing out commercial fishing/harvesting from Merritt Island NWR by September 30, 2028, as listed.

- 516 DM 8.5(A)(1) – changes or amendments to an approved action when such changes have no or minor potential environmental impact
- 516 DM 8.5(B)(2) – operation, maintenance, and management of existing facilities and routine, recurring management activities and improvements, including renovations and replacements, which result in no or only minor changes in the use, have no or negligible environmental effects on-site or in the vicinity of the site
- 516 DM 8.5(B)(7) – minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures
- 516 DM 8.5(B)(9) – minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated

The above listed use was included in the Comprehensive Conservation Plan (CCP) (FWS 2008) for Merritt Island NWR. The Environmental Assessment (EA) (FWS 2006) for the draft CCP (FWS 2006) for Merritt Island NWR previously analyzed the impacts of this use. The Finding of No Significant Impacts (FWS 2008) for the 2006 EA determined that no significant impacts were anticipated; the phase-out of commercial fishing and its associated impacts to the affected environment have not changed substantially since that analysis. Further, the Proposed Action will not trigger any of the extraordinary circumstances outlined in 43 CFR §46.215. For the above listed reasons and citations from 43 CFR §46.210 and 516 DM 8, the Proposed Action is categorically excluded from further NEPA documentation.

Permits/Approvals. All necessary coordination and consultation regarding the previous analysis and approval of this use for Merritt Island NWR occurred during the development of the CCP. The use may only occur on Merritt Island NWR through a valid, Service-issued special use permit (SUP); the use must also meet all applicable local, State, and federal laws, regulations, and policies. An SUP will not be issued to an applicant until all applicable requirements are

met. Since the use will be phased out from Merritt Island NWR, when SUPs are not renewed or are revoked, those SUPs will be retired and will not be re-issued.

Public Involvement/Interagency Coordination. The Service conducted robust public involvement during the development of the previous CD to phase out the use under the CCP for Merritt Island NWR, which included scoping and public review and comment (see FWS 2006 and FWS 2008 for details). Further, given the overlap with Canaveral National Seashore, National Park Service, this use was also discussed during the development of the General Management Plan for Canaveral National Seashore (CANAS, National Park Service 2014). This current compatibility determination re-evaluation builds upon the previous planning and public involvement effort for the CCP.

The Service conducted public scoping on the proposed 10-year extension of the commercial fishing/harvesting use from August 22, 2017 through September 8, 2017. The Service mailed or emailed a public information flyer to nearly 700 individuals, organizations, permit holders, businesses, and governmental agencies. In addition, the Service posted the public information flyer at the refuge's visitor center, on the refuge's website, and on the refuge's Facebook page. A press release was also sent out. One article appeared in the refuge's volunteer newsletter, the Painted Bunting, which is emailed to approximately 84 refuge volunteers. Although a press release was sent out to 10 local media outlets, none of them covered the scoping period in print or in online articles. The Service received 27 comments during the 2017 scoping period expressing both support and opposition to the proposed extension of the commercial harvesting use. Combined with previous comments submitted during the CCP's planning process, these scoping comments were used to help inform development of the draft CD and the draft Environmental Action Statement (EAS) (FWS 2018a). The draft CD and draft EAS were made available to the public for review and comment for a period of over 30 days (). The potentially interested Native American Tribes were invited to review the draft CD and draft EAS and send the Service any concerns or comments. The draft CD and draft EAS were also sent to the Florida State Clearinghouse for review and comment by State agencies. Public notice included mail and email notices to the mailing list and Merritt Island NWR special use permit holders, notice posted on the Merritt Island NWR website and Facebook page, and notice posted at the Merritt Island NWR visitor center.

The Service received 82 submissions on the proposal from individuals, commercial anglers/harvesters, commercial fishing guides, organizations, local businesses, and governmental agencies. All comments received on the draft CD and draft EAS were reviewed in the development of the final CD and final EAS. See Appendix C of the final CD for a summary of the substantive comments submitted and the Service's responses.

Supporting Documents. Supporting documents for this determination include relevant office file material and the listed key references.

National Park Service. 2014. Canaveral National Seashore, Florida Final General Management Plan/Environmental Impact Statement. U.S. Department of the Interior, National Park Service. Atlanta, GA. 436 pp.
<https://www.nps.gov/cana/learn/management/upload/GMP.pdf>

U.S. Fish and Wildlife Service. 2006. Draft Comprehensive Conservation Plan and Environmental Assessment for Merritt Island National Wildlife Refuge, Brevard and Volusia Counties, Florida. U.S. Department of the Interior, Fish and Wildlife Service, Southeast

Region. Atlanta, GA. 303 pp.

<https://www.fws.gov/southeast/planning/CCP/MerrittIslandDraftSinglePageDocument.htm>

U.S. Fish and Wildlife Service. 2008. Comprehensive Conservation Plan for Merritt Island National Wildlife Refuge, Brevard and Volusia Counties, Florida. U.S. Department of the Interior, Fish and Wildlife Service, Southeast Region. Atlanta, GA. 320 pp.

<https://www.fws.gov/southeast/planning/CCP/MerrittIslandFinalPg.html>

U.S. Fish and Wildlife Service. 2018a. Draft Compatibility Determination and Draft Environmental Action Statement for Commercial Fishing (Phase-Out) at Merritt Island National Wildlife Refuge, Brevard and Volusia Counties Florida. Titusville, FL. 16 pp.

https://www.fws.gov/Refuge/Merritt_Island/

U.S. Fish and Wildlife Service. 2018b. Compatibility Determination and Environmental Action Statement for Commercial Fishing (Phase-Out) at Merritt Island National Wildlife Refuge, Brevard and Volusia Counties Florida. Titusville, FL. 27 pp.

https://www.fws.gov/Refuge/Merritt_Island/



Layne Hamilton, Project Leader, Merritt Island NWR Complex



Date